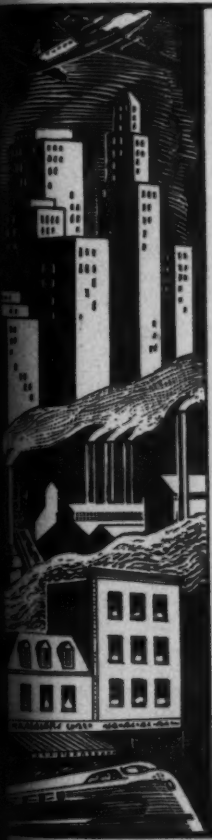
The
ORPORATION JOURNAL

Trademark ®

In the incorporation, qualification and statutory representation of corporations, The Corporation Trust Company, CT Corporation System and associated companies deal with and act for lawyers exclusively.

22, No. 6 JUNE—JULY 1958 Complete No. 415



West Virginia by-law providing for staggered election of directors held invalid. . . Page 105

•

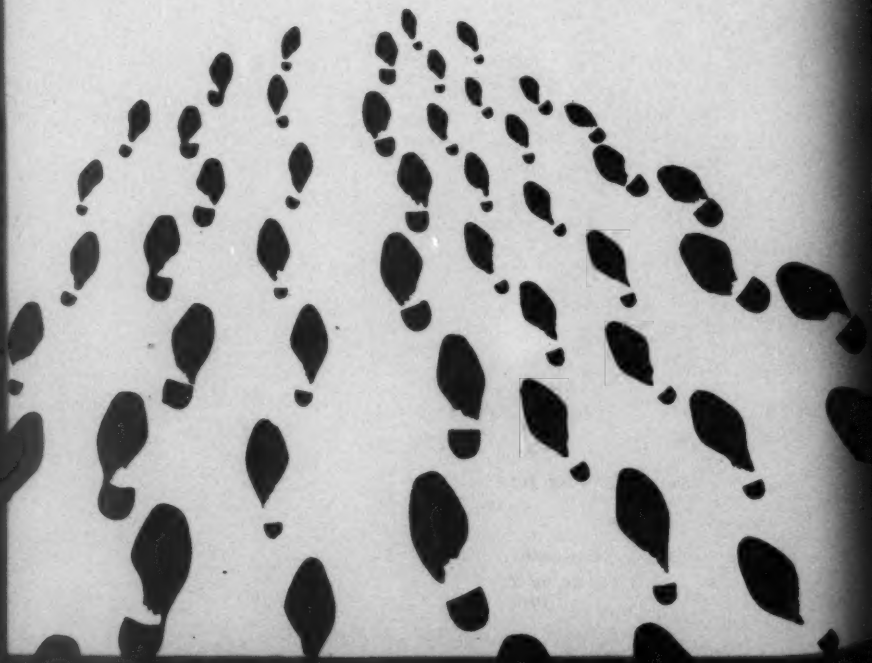
Foreign corporation in California, delinquent in paying franchise taxes, ruled deprived of right to defend suit. . . Page 113

•

lished by The Corporation Trust Company and Associated Companies

When a service for lawyers has lived and grown for six and a half decades, and its use has so steadily spread that it is looked upon by a large part of the profession as a necessity, you know that service is meeting an economic and professional need.

The C.T System of Corporation Protection is such a service—grown even more important and necessary as *system* and *efficiency* become more vital every day.



The
CORPORATION JOURNAL
Trademark ®

JUNE—JULY 1958

Contents

Recent Decisions

Copyright 1958, by The Corporation Trust Company
Printed in U. S. A.

To begin with:

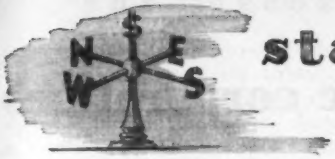
there is the problem of the welter of involved rulings and regulations governing the transfer of a corporation's stock.

In the middle:

there is the problem faced by the corporation's officers. They are responsible for every transfer made.

In the end:

you come to the conclusion that the easy answer—and the safest course of action, whether the corporation has many or only a few stockholders—is to let a professional transfer agent handle the details and assume the responsibility. Any of our offices will explain the special advantages of having CT act as Transfer Agent for your clients.



state tax trends

Inspection of Corporate Tax Returns

A GENERAL SURVEY of the extent to which data contained in tax returns filed by corporations with state officials or boards is open to public inspection reveals that, by and large, such data is withheld from public inspection far more often than it is available for such examination.

The mere absence of a provision in a taxing statute to the effect that data contained in tax reports is to be held confidential by the administrative officials is no indication that such data is necessarily open to public inspection. At times inspection may be denied on the basis of a broad statute relating to official records or on the basis of the practice of a particular department.

Net Income Tax Reports

Corporation net income tax reports filed with State Officials or boards are not open to public inspection in all except one of the thirty-odd states which impose such corporate net income taxes. This grouping would include those states which impose franchise taxes measured by net income, such as California, Connecticut, Montana, New York, Utah and Vermont. In Wisconsin, corporate net income tax information is available under somewhat limited circumstances under Section 71.11(44), Wisconsin Statutes.

Gross Income Tax Reports

The gross income tax reports filed by corporations in Indiana, New Mexico, Washington and West Virginia are not open to public inspection.

Franchise Tax Returns

Fifteen of the twenty-three states which impose annual franchise or license taxes on corporations, levied on bases other than net income, have provided by statute for secrecy in connection with the data contained in their franchise tax returns. These states are Arkansas, Georgia, Illinois, Kentucky, Mississippi, Missouri, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas and Virginia. Eight states, however, do not appear to have like statutory provisions. These are Colorado, Delaware, Kansas, Maine, Nebraska, South Carolina, Washington and Wyoming.

Sales and Use Tax Returns

In at least two-thirds of the states which impose retail sales taxes, the data contained in the returns filed is characterized as secret in the statutes imposing the taxes. Like provisions are to be found in approximately one-third of the states imposing use taxes.

Annual Reports

Annual reports, which are filed for other than income or franchise tax purposes, are rather generally, in practice, open to public inspection. Examples are to be found in such states as Connecticut, Florida, Georgia, Indiana, Iowa, Louisiana, Maine, Massachusetts, Montana, New Hampshire, New Jersey, New Mexico, North Dakota, Oklahoma, Rhode Island, South Carolina, Vermont and Wisconsin.

domestic corporations

NEW YORK

By-laws of membership corporation may provide that directors must be members.

In a proceeding to review an election of directors of respondent membership corporation, the question presented was whether the by-laws of such a corporation may validly provide that directors must be members. Section 45 of the Membership Corporation Law provides, in part, that "officers and directors need not be members." The by-laws in this instance provided that "directors shall be elected by the corporation from its members."

The Supreme Court, Appellate Division, Fourth Department, interpreted the law as being "permissive, not mandatory, and that the by-laws may still validly provide that directors must be members of the corporation which they seek to serve."

In re Tri-County Memorial Hospital, 165 N.Y.S. 2d 590. Levant M. Heimlein, Jr., of Gowanda, in pro. per. Andrew J. Musacchio of Gowanda, for respondent Tri-County Memorial Hospital. Donald Wightman of Eden, in pro. per.

Section 20 of the Stock Corporation Law, requiring the consent of stockholders to transactions not in the regular course of business, held not applicable to the sale, by a real estate corporation operating a theatre, of the theatre lease.

The owner of 50% of the stock of a New York real estate corporation brought a derivative action primarily to set aside the sale of a sublease of a theatre by the corporation through its officers to the defendant. The only activity of the corporation at the time of the sale of the lease was the operation of the theatre and the production of plays. The ground upon which the transfer was assailed in the Court of Appeals was that it was consummated without stockholders consent, as required by Section 20 of the New York Stock Corporation Law, which provides, in part, that a stock corporation "may voluntarily sell, lease or exchange its property, rights, privileges and franchises, or any interest therein or any part thereof; provided, however, that if such lease or exchange is not made in the regular course of business of the corporation and involves all or substantially all of its property, rights, privileges and franchises, or an integral part thereof essential to the conduct of the business of the corporation, such sale, lease or exchange shall not be made without the consent of either the holders of record of all of its outstanding shares

entitled to vote thereon given in writing without a meeting or the holders of record of two-thirds of its outstanding shares entitled to vote thereon obtained at a meeting of the stockholders called pursuant to section forty-five."

The Court of Appeals, in holding that Section 20 of the Stock Corporation Law was inapplicable to the sale, took the position that "if in view of the purposes and objects for which the corporation was created the particular sale may be regarded as one in the normal course of the business of the corporation, Section 20 is inapplicable." The stated object of this corporation was the general trading and dealing in lands, buildings and structures. The plaintiff claimed that the fact that the certificate of incorporation established the corporation as one dealing in real estate only was not controlling, and the court must judge the applicability of Section 20 on the basis of the business in which the corporation was actually engaged, i. e., the operation of a theatre and the production of plays, and that the sale of the theatre lease was not in the regular course of that business and, in fact, effectively put the corporation out of business. The court held that an ultra vires activity such as the operation of a theatre by a real estate corporation could not be deemed the regular business of the corporation within the meaning of Section 20, and therefore Section 20 had no application to the sale.

Eisen v. Post et al., 169 N.Y.S. 2d 15, 3 N.Y. 2d 518, 146 N. E. 2d 779. Joseph Feldman, Herbert M. Rosenberg and Irwin H. Rosenberg of New York City, for John Post, Jr., and other appellants. Irving D. Lipkowitz, Richard Lieb, William Hughes Lewis and Roy Plaut of New York City, for Louis Schweitzer, appellant. John J. Redfield and Jacquelin A. Swords of New York City, for New York State Title Association, amicus curiae, in support of appellants' position. Justin M. Golenbock, Stanley Goldstein and Donald D. Shack of New York City, for respondent.

WEST VIRGINIA

By-law providing for staggered election of directors held invalid.

The corporate by-laws staggered the election of the five directors, so that not more than two of the five would be elected at the same time, instead of all five being then elected. Two were to be elected in one year, two in two years thereafter, and one in four years thereafter, each to serve for six years, with the exception that two named persons should, without election, be directors respectively, one for ten years and the other for fifteen years after June 27, 1950, by virtue of contracts made between these individuals and the corporation. The Supreme Court of Appeals observed that during the period provided in these contracts with the corporation, there could be only three other directorate positions to be filled, and not more than two of them at the same time. The court said: "Regardless of the motives or purposes of the management of the corporation, or whether such by-law provisions have proved beneficial, it is readily observable that such limitation gives a majority of the stockholders the power to elect all directors of the corporation with no power in a lesser percentage of the votes to elect a single director, and thus deprives entirely the minority of representation on the board and a voice in the management of the affairs of the company. As stockholders have the right to

vote cumulatively, a plan which prevents the full enjoyment of that right is, to that extent, an effectual and substantial denial of the right and illegal. Accordingly, we are of the opinion that the stockholders had the right to vote on all five positions of directors of the corporation, and they could not be limited to the selection of any lesser number."

The court ruled that the two individuals were not lawful directors of the corporation and that their positions on the board were subject to election by the stockholders. It also held that a by-law provision to the effect that stockholders could only vote by a proxy who was also a stockholder, thus preventing any person who was not a stockholder from being eligible to represent a stockholder in the meetings of the corporation, was a restriction not warranted by law.

State ex rel. Syphers et al. v. McCune et al., 101 S. E. 2d 834. W. F. Keefer and Joseph R. Curl of Wheeling, for relators. Gilbert Bachmann and Jay T. McCamic of Wheeling, for respondents.

foreign corporations

CALIFORNIA

Service upon unlicensed foreign corporation, effected upon the Secretary of State, upheld where made upon agent soliciting orders, recommending dealers and handling customers' complaints.

One of the defendants, an Illinois corporation, was served under Sections 6501 and 6502, Corporations Code, through service upon the Secretary of State. It filed a special appearance and notice of motion to set aside service of summons and complaint on the ground that it was not "doing business" in the state. It had a sales representative who described himself as a manufacturer's agent within a territory covering California, Oregon, Washington and Arizona. He called upon dealers and prospective dealers in California. New dealers were appointed upon his recommendation. He was under the supervision of the company's sales manager, located in Illinois. Orders for merchandise were sometimes given to him personally and others were mailed directly to the company, but in either event he received a commission which constituted his sole remuneration from the company. He also handled complaints from customers. During the latest of several years involved, he was employed by a California company which acted as manufacturer's agent for the defendant mentioned.

The California District Court of Appeal, Fourth District, held that the company was doing business in California so as to be subject to jurisdiction and service of process.

Gray et al. v. Montgomery Ward, Inc. et al., District Court of Appeal, Fourth District, November 7, 1957. James E. Kelly and Elber H. Tilson of Los Angeles, for appellant. Head, Jacobs & Jacobs of Los Angeles, for respondents.

DISTRICT OF COLUMBIA

Attachment service quashed where corporation maintained only an officer in District to effect liason with Government departments.

The appellant, who had secured a judgment against an employee of appellee corporation, issued a writ of attachment on the judgment for the purpose of seizing credits of the employee in the hands of the corporation, and served the writ on an employee in its office maintained in the District. Counsel for the corporation filed a written motion to quash the attachment, principally on the ground that the company was not "doing business" in the District and was not amenable to process. An affidavit of an officer of the company indicated that it maintained no office or telephone directory listing in the District and operated no manufacturing plants, warehouses, sales or administrative offices there. An officer of the company had a local office for his own convenience in maintaining liason between the company and departments and agencies of the Federal Government in connection with contracts relating to products manufactured by the company elsewhere. He had no authority to make commitments as an agent of the company or to accept orders for the corporation's products.

The municipal Court of Appeals for the District of Columbia affirmed a judgment granting the corporation's motion to quash the attachment, regarding the corporation as not "doing business" in the District.

Weisblatt v. United Aircraft Corporation, 134 A. 2d 713. Jack Politz of Washington, for appellant. Paul M. Rhodes of Washington, for appellee.

ILLINOIS

Service sustained where made upon corporation having an office and telephone listing and agent soliciting orders in state, in suit on contract entered into and to be performed in state.

Defendants, two foreign corporations, moved to quash service of process upon them, effected upon their Illinois agents soliciting orders and also upon an individual who was the common president and secretary of both, contending that the corporations were not doing business within the state. Orders obtained were filled by shipments from other states to the Illinois customers, there being no Illinois bank accounts and no Illinois real estate owned. Offices, with telephone listings, had been maintained in Chicago for over ten years. The contract sued upon was entered into in Illinois, defendants agreeing to employ plaintiff as general sales manager in Illinois.

The United States District Court, Northern District of Illinois, Eastern Division, regarded the jurisdiction of the court as sustained both by Federal and State law. As to State law, the court referred to Section 17 of the Illinois Civil Practice Act, providing in part for jurisdiction over a non-resident as to any cause of action arising from the "transaction of any business within this

State." It expressed the view "that Illinois courts would claim jurisdiction over the corporate defendants in this case under Section 17(a), where, as here, the cause of action arises out of a contract entered into by defendants within this State and one which was to be performed wholly within this State." The motion to quash service was denied.

*Haas v. Fancher Furniture Company,** United States District Court, Northern District of Illinois, Eastern Division, December 5, 1957; 156 F. Supp. 564.

---

* The full text of this opinion is printed in the **State Tax Reporter**, Illinois, page 10,178.

MINNESOTA

Stockholder of foreign corporation subject to jurisdiction of Minnesota courts regarded as entitled to inspect corporate records in another state at the corporation's principal place of business.

Plaintiff was a large stockholder in defendant Delaware company, which did a substantial amount of business in Minnesota, where it was licensed as a foreign corporation and where two of the principal officers, the president and the vice-president, were said to reside. The action was to compel the corporation to allow the plaintiff to inspect its books and records, located in the State of Washington, where the principal place of business was and where the custodian, the secretary-treasurer, resided. The corporation admitted that the parties were properly before the court and therefore that the court had jurisdiction to decide whether the right to inspection existed.

The Supreme Court of Minnesota affirmed a judgment granting the stockholder a peremptory writ of mandamus ordering the corporation to make its books and records available for inspection at the place where such records were kept. In answering contentions of the company, concerned with the inspection of the records kept in another state, the state Supreme Court observed: "Where the essential merits of the plaintiff's rights are as compelling as they are here we do not think the court erred in granting the relief asked because the court could not act directly at the place where the act required was to be carried out."

Sanders v. Pacific Gamble Robinson Co., 84 N. W. 2d 919. Perry R. Moore and Mackall, Crounse, Moore, Helmey & Palmer, of Minneapolis, for appellant. Worth K. Rice and Sanborn, Jackson & Rice of St. Paul, for respondent.

NEW YORK

Corporation not doing business in state ruled not subject to service of process.

The New York Supreme Court, Special Term, New York County, Part I, held that a foreign corporation was not doing business so as to be subject to service of process under circumstances where it conducted no business and was not qualified to do so, and where it had neither an office nor office equipment,

office building or telephone directory listing and no employees, salesmen, mailing address, warehouse or agent for the service of process and paid no taxes and neither owned nor rented any property in the state. Also not regarded as the doing of business was the sale of its securities on the New York Stock Exchange, and the incidental maintenance of bank accounts for dividend payments, transfer agents and registrar's office; occasional meetings of the executive committee of its board of directors and a stock interest in certain New York corporations.

Joseph Walker & Sons v. The Lehigh Coal & Navigation Company, 167 N. Y. S. 2d 632. Bleakley, Platt, Gilchrist & Walker (Dennis P. Donovan, Robert L. Conkling, of counsel), of New York City, for plaintiff. Simpson, Thacher & Bartlett (Stephen P. Duggan, Jr., Whitney North Seymour, Jr., of counsel), of New York City, for defendant, appearing specially.

Motion to set aside service upon defendant's executive vice president, who was shorn of his office five days before service, in order to enable him to refuse service, denied.

Defendant unlicensed Illinois corporation appeared specially and moved to quash service, and to dismiss the action for want of jurisdiction over it within the Southern District of New York and on the further ground that service, upon a former executive vice president, was made upon a person who was not at the time of service authorized to receive service on its behalf. The service had been effected upon one who had been an executive vice president of defendant, with an office in New York City, who had been given "full signatory powers to contract sale of oil and financing," who solicited orders for oil on defendant's behalf from a number of New York brokers and engaged in other business transactions in furtherance of defendant's interests. Five days prior to service the person who was served was notified by defendant's president that his appointment as executive vice president had been cancelled, so that he might refuse such service. Neither the plaintiff nor its attorney was informed of the cancellation of appointment. The former executive vice president continued to act thereafter for the defendant upon matters involving the sale of oil which were outstanding.

The motion to quash the service and to dismiss the suit for want of jurisdiction of the person was in all respects denied by the United States District Court, Southern District of New York, which regarded the grounds upon which the motion was made as without merit.

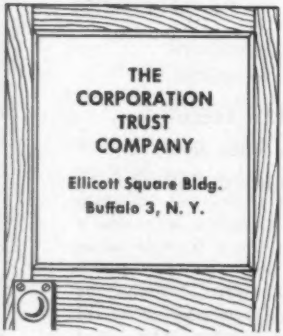
Neris Carbon and Oil Corporation v. Transcontinental Oil Company, 156 F. Supp. 790. Thaddeus G. Benton of New York City, for plaintiff. William A. Smith of Staten Island, for defendant.

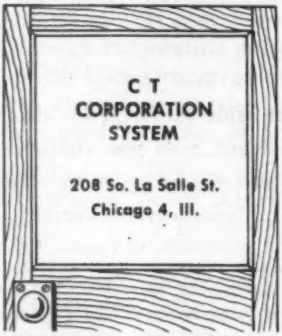
Through these Portals . . .

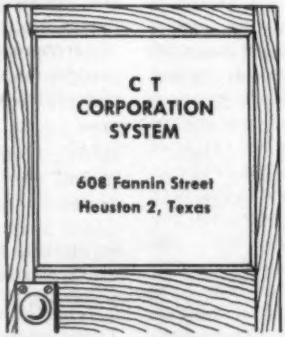
passes the most helpful, most complete, easiest-to-use information on corpor filings a lawyer can find.

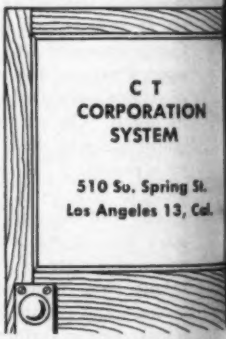
Incorporation? Qualification? Merger? Amendment? Dissolution? Withdraw In which state or Canadian province?

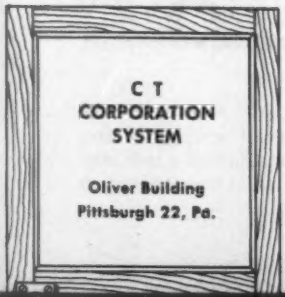
Just knock on the door of the CT office nearest you. Or telephone. *Today* formation about state filing fees and requirements will be given to you (it is lawyers only, of course) without charge or obligation.

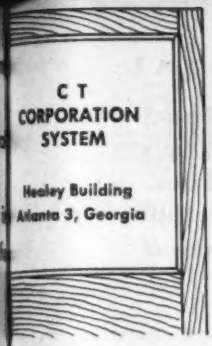


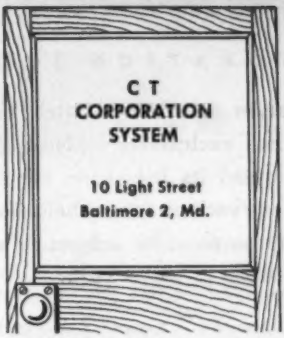


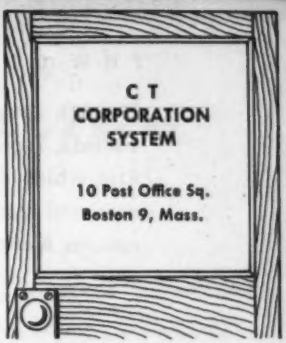


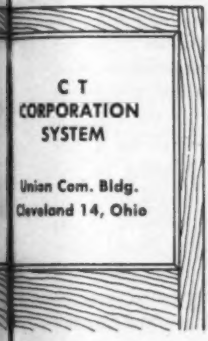


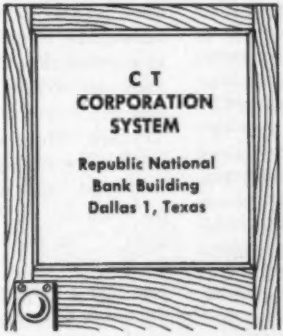


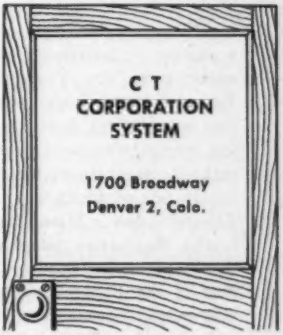

C T
CORPORATION
SYSTEM
Healey Building
Atlanta 3, Georgia

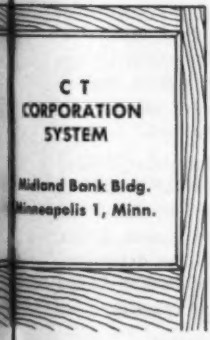

C T
CORPORATION
SYSTEM
10 Light Street
Baltimore 2, Md.


C T
CORPORATION
SYSTEM
10 Post Office Sq.
Boston 9, Mass.

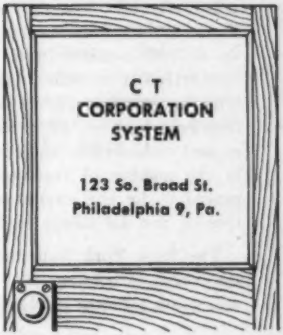

C T
CORPORATION
SYSTEM
Union Com. Bldg.
Cleveland 14, Ohio

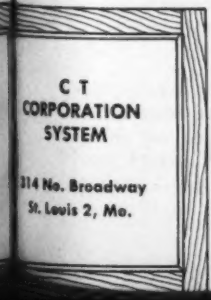

C T
CORPORATION
SYSTEM
Republic National
Bank Building
Dallas 1, Texas


C T
CORPORATION
SYSTEM
1700 Broadway
Denver 2, Colo.


C T
CORPORATION
SYSTEM
Midland Bank Bldg.
Minneapolis 1, Minn.


THE
CORPORATION
TRUST
COMPANY
120 Broadway
New York 5, N. Y.


C T
CORPORATION
SYSTEM
123 So. Broad St.
Philadelphia 9, Pa.


C T
CORPORATION
SYSTEM
314 No. Broadway
St. Louis 2, Mo.


C T
CORPORATION
SYSTEM
Munsey Building
Washington 4, D. C.


THE
CORPORATION
TRUST
COMPANY
100 W. 10th St.
Wilmington 99, Del.

Foreign corporation operating hotel in Miami, Florida, represented exclusively in New York by a firm which distributed its literature, solicited business and made reservations for it, held doing business in New York so as to be subject to service of process in New York.

The plaintiff brought this action for personal injuries received while a guest in defendant foreign corporation's hotel in Miami, Florida. Service was made on a partner of defendant's exclusive representative in New York, the Broadway Resort Service, which was engaged in the independent business of distributing information, soliciting business and making reservations for various resort hotels, one of which was the defendant. The defendant's Miami hotel was listed in the Manhattan telephone directory, the number and address given being that of the Broadway Resort Service, and in advertisements in the New York newspapers the Broadway Resort Service was referred to as defendant's New York office. Defendant paid that firm an annual retainer and bonuses and authorized it to solicit and correspond with prospective guests and distribute literature supplied by defendant. It exercised considerable authority in relation to the making of reservations, and appeared to be the exclusive representative of the defendant in New York.

The New York Supreme Court, Special Term, in holding that the defendant was doing business in New York in such a sense and degree as to subject it to the jurisdiction of the New York courts, observed that "in establishing and publicizing its 'New York office' it is fair to say that this office performs services necessary to the defendant's business and the enhancement of its financial structure. There appears to be a fair measure of continuity of action by the New York office which would constitute the defendant as 'doing business' in this state." "That the Broadway Resort Service is a separate entity is overcome by the fact that a foreign corporation may be deemed to be doing business here through another corporation or firm, not necessarily a subsidiary corporation, which acts as its exclusive agent or representative." "Nor does jurisdiction fail because the cause of action arises from dealings entirely distinct from the activities of defendant's New York office."

Miller v. Belmar Hotel Corporation, 168 N. Y. S. 2d 1002. Kahn, Riley & Goeggeman, for plaintiff, by David M. Kahn of White Plains, of counsel. Evans, Orr, Gourlay & Pacelli, for defendant, appearing specially by William F. Laffin, Jr. of New York City, of counsel.

taxation

CALIFORNIA

Foreign corporation which had failed to pay its California franchise taxes for a number of years held deprived of the right to defend an action.

Plaintiff, a California corporation, commenced this action against defendant Nevada corporation to declare cancelled a lease of mining property and equipment, and by an amended complaint a stockholder of plaintiff corporation joined in the action. The basis of the action was that the lease of real and personal property to the defendant constituted a lease of substantially all of the plaintiff corporation's assets and therefore required the approval of the stockholders, which had not been obtained, and which was subsequently specifically refused. During the course of the trial it was discovered that defendant foreign corporation had not paid its franchise taxes for a number of years, and plaintiff thereupon moved to enter a default against defendant on the ground that it had thereby forfeited its right to transact business in California, including the right to defend this action. Plaintiffs appealed, from a judgment denying relief, to the California District Court of Appeals, 3rd Appellate District.

In reversing the judgment, the District Court of Appeal declared that the pertinent California statute, Section 23301 of the Revenue and Taxation Code, expressly deprived the defendant of all its powers, rights and privileges, including the right to defend an action. The fact that the failure of defendant to pay its franchise taxes was not raised until the final day of the trial did not aid the defendant since its powers, rights and privileges were not revived and restored before the entry of the judgment appealed from. The judgment in favor of the defendant was reversed.

The Alhambra-Shumway Mines, Inc., et al. v. Alhambra Gold Mine Corporation, 317 P. 2d 649. Lamberson & Thomas, for appellants. Entenza & Gramer, Jerome Weber and Jesse Whitehill, for respondent. (*Appeal to the United States Supreme Court filed March 28, 1958; Docket No. 880.*)

FLORIDA

Act increasing tax on intangibles, effective by its terms July 1, 1957, held not applicable for the calendar tax year 1957, because of presumption against retrospective operation of statutes unless such intention is clearly expressed.

Taxpayers were required to pay certain taxes on their intangible personal property for the year 1957 under Chapter 57-399, Florida Statutes 1957, which provided for a levy of two mills on each dollar of valuation, which was twice the tax required under the former provisions. When the taxpayers' demand for a refund of one-half of the tax paid was refused, this suit was instituted,

taxpayers filing, in the Florida Supreme Court, a petition for a writ of mandamus directing the Comptroller to make the refund. Section 2 of the 1957 act provided that the act would take effect on July 1, 1957. Since the tax period for intangibles is the calendar year, this gave rise to the question whether or not the taxpayers were liable for the increased tax for the calendar year 1957.

The court, in holding that the increased tax did not apply for the year 1957, applied the presumption that a legislative act operates prospectively unless the intent that it operate retrospectively is clearly expressed, and stated that, "there is positively nothing in the title of the statute under study to inform a reader it contained a provision that it would operate retrospectively, or in the body 'clearly' stating that purpose except the date it would become effective, a date having no significant relationship with the first day of a tax year otherwise fixed by law." Further, the court referred to "the *cardinal* rule that statutes imposing taxes must be clear and specific and will be 'liberally construed in favor of the taxpayer.' " The peremptory writ was ordered issued, requiring the Comptroller to refund one-half of the tax paid.

*State ex rel. Riverside Bank et al. v. Green,** Florida Supreme Court, April 2, 1958. Evans, Mershon, Sawyer, Johnston & Simmons and Herbert S. Sawyer, for relators. Richard W. Ervin, Attorney General, Fred M. Burns, Assistant, Attorney General and Wilson W. Wright, Special Assistant Attorney General, for respondent. Wilson Trammell, Granville C. Conner, Talbot W. Trammell and W. K. Whitfield for amicus curiae.

* The full text of this opinion is printed in the **State Tax Reporter,** Florida, page 10,096.

Intangible property tax return of foreign company, doing business and owning property in several counties, required only in county where principal office or place of business is located.

"This appeal," observed the Supreme Court of Florida, "raises the question whether a foreign corporation which does business, and owns intangible personal property, in several counties of this state, should file an intangible tax return in each county within which it owns intangibles."

The court, after an examination of the pertinent law, remarked: "Lacking a clearly expressed legislative intent to the contrary, the statutory language must be deemed to include foreign as well as domestic corporations. Therefore, a foreign corporation which is doing business and owns intangibles in several counties of the state complies with the requirement of the statute when it files in the county wherein is located its principal office or place of business a single return of all its intangibles within the state."

Green v. Forbes, 96 So. 2d 902. Richard W. Ervin, Atty. General, T. Paine Kelly, Asst. Atty. General, and Lewis H. Tribble of Tallahassee, for appellant. Truett & Watkins of Tallahassee, and Walter C. Shea of Jacksonville, for appellee.

state legislation

Arizona — Chapter 25, Laws of 1958, eliminates the present requirement that foreign corporations appoint a statutory agent in each county in which the corporation will carry on business. After July 1, 1958, a foreign corporation qualifying in Arizona will designate a statutory office, which may but need not be the same as its business office, and appoint a statutory agent, either an individual, resident of the state for three years, or a domestic or qualified foreign corporation authorized by its articles to act as agent for service of process, the address of which agent is the same as the address of the statutory office. A new section is added which provides that all appointments of statutory agents made by a foreign corporation prior to June 30, 1958 shall continue in full force and effect. Provision is also made for the filing of a certificate by a corporation which has appointed more than one statutory agent in the state to file a certificate designating one statutory agent and revoking the appointment of all other statutory agents and also for procedure to be followed upon change of the statutory agent or office of a foreign corporation.

South Carolina — House Bill 1947 contains provision for withholding taxes by employers from non-residents, beginning January 1, 1959, and for the reporting of such withholding quarterly thereafter.

Important Virginia Requirements
July 1, 1958 Deadline

Foreign corporations in Virginia are required by the Stock Corporation Act (Chapter 428 of 1956) to establish a registered office and appoint a registered agent prior to July 1, 1958. This is accomplished by filing a Statement, in duplicate, with the State Corporation Commission and by the payment of a $1 fee. However, if the Statement of a foreign corporation is not filed by July 1, 1958, its certificate of authority to transact business will be automatically revoked.

Domestic corporations in Virginia are also required to establish a registered office and appoint a registered agent by filing a Statement, in duplicate, with the State Corporation Commission, accompanied by one check for $1 payable to the State Corporation Commission and another check for $1 payable to the Clerk of the Court, prior to July 1, 1958. However, if the Statement of a domestic corporation is filed after June 30, 1958 and before January 1, 1959, an additional fee of $50 will be payable. If the Statement is filed after December 31, 1958 and before July 1, 1959, the additional fee will be $100. If the Statement is not filed by July 1, 1959, the corporate existence of a domestic corporation will automatically cease on July 1, 1959.

appealed to the supreme court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

CALIFORNIA. Docket No. 880. *Alhambra-Shumway Mines, Inc. et al. v. Alhambra Gold Mine Corporation,* 317 P. 2d 649. (The Corporation Journal, June—July, 1958, page 113.) Failure to pay franchise taxes—right to defend action. **Appeal filed, March 28, 1958.**

GEORGIA. Docket No. 763. *Stockham Valves & Fittings, Inc. v. Williams,* 101 S. E. 2d 197. (The Corporation Journal, December 1957—January 1958, page 55.) Corporation income tax—interstate commerce. **Petition for writ of certiorari filed, February 3, 1958. Certiorari granted, March 17, 1958.** (78 S. Ct. 670.)

INDIANA. Docket No. 701. *Department of Revenue v. Bendix Aviation Corporation,* 143 N. E. 2d 91. (The Corporation Journal, April—May, 1958, page 93.) Gross income and bonus taxes—receipts from Government contracts. **Appeal filed, January 3, 1958. Motion to dismiss granted and appeal dismissed for want of a substantial Federal question, March 3, 1958. Petition for rehearing denied, April 7, 1958.** (78 S. Ct. 714.)

MICHIGAN. Docket No. 26. *United States et al. v. City of Detroit,* 77 N. W. 2d 79. (The Corporation Journal, February—March, 1957, page 313.) Property tax on lessee of property leased by Federal government. **Appeal filed, October 8, 1956. Probable jurisdiction noted, January 14, 1957.** (77 S. Ct. 353.) **Argued, November 14, 1957. Affirmed, March 3, 1958.** (78 S. Ct. 474.)

MINNESOTA. Docket No. 606. *Minnesota v. Northwestern States Portland Cement Co.,* 84 N. W. 2d 373. (The Corporation Journal, August—September, 1957, page 14.) Income tax—income received by corporation engaged only in interstate commerce. **Appeal filed, November 12, 1957. Probable jurisdiction noted, January 6, 1958.**

OHIO. Docket No. 588. *Youngstown Sheet & Tube Co. v. Bowers,* 166 O. S. 122, 140 N. E. 2d 313. (The Corporation Journal, February—March, 1958, page 72.) Property taxes—ores imported from foreign countries. **Appeal filed, October 30, 1957. Probable jurisdiction noted, January 6, 1958.**

---

* Data compiled from **CCH U. S. Supreme Court Bulletin.**

regulations and rulings

California — A Massachusetts trust engaged in the business of buying, selling and renting real property must report income derived from California sources on the basis of separate accounting. (Ruling, State Board of Equalization, State Tax Reporter, California, ¶ 200-844.)

A subsidiary corporation with income derived entirely from California sources must report income with the parent and another subsidiary on a unitary basis and use the allocation formula when it is shown that the subsidiary derives benefit from the group operation. (Ruling, State Board of Equalization, State Tax Reporter, California, ¶ 200-846.)

Georgia — Liability for payment of the franchise tax begins on the date of incorporation even though a corporation does nothing further, because a benefit has been derived from the mere pre-emption of a corporate name. The law provides for a minimum tax of $10 and the fact that there has been no capitalization and no money has been paid into the corporation will not relieve liability for payment of that amount. (Opinion of the Attorney General, State Tax Reporter, Georgia, ¶ 200-124.)

A corporation entitled to employ the three-factor apportionment formula in ascertaining its Georgia income tax liability even though only two factors, salaries and wages and gross receipts, are present in the state, inventory being zero in Georgia although an income-producing factor elsewhere. However, the inventories present out of state must be more than nominal or insubstantial to justify the use of the three-factor formula. (Ruling of Attorney General, State Tax Reporter, Georgia, ¶ 200-123.)

Missouri — If a subcontractor sells tangible personal property to a contractor who uses and consumes the property in the erection of buildings constituting real estate, the 2% sales tax is required to be paid by the prime contractor to the subcontractor. There is no liability on behalf of the contractor or the subcontractor for sales tax if the subcontractor furnishes all labor, materials, equipment and services necessary to fabricate certain doors, frames and window settings and installs them permanently on real estate. (Opinion of the Attorney General, State Tax Reporter, Missouri, ¶ 200-203.)

New Mexico — Legislative approval is required before the Board of Directors of the Contractors' License Board may change, in any degree whatsoever, the license fees prescribed by the Legislature for contractors. (Opinion of the Attorney General, State Tax Reporter, New Mexico, ¶ 200-058.)

North Carolina — Qualification is required where a foreign corporation ships goods to a North Carolina company for processing and where the goods are warehoused, after processing, on the premises of the North Carolina company and subsequently shipped by it to customers of the foreign corporation in the eastern part of the United States and billed by the North Carolina company, which charges the foreign corporation for the service. (Opinion of the Attorney General, State Tax Reporter, North Carolina, ¶ 200-337.)

some important matters

For June and July

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

Alabama — Quarterly Withholding Tax due on or before July 31.—Domestic and Foreign Corporations.

Alaska — Returns of Tax Withheld at the source due on or before July 31.—Domestic and Foreign Corporations.

Arizona — Quarterly Withholding Tax due on or before July 31.

Arkansas — Anti-Trust Affidavit due on or before August 1.—Domestic and Foreign Corporations.

California — Quarterly Retail Sales Tax Returns and Payments due on or before July 31.—Domestic and Foreign Corporations.

Colorado — Quarterly Withholding Tax due on or before July 31.

Connecticut — Quarterly Retail Sales Tax Returns and Payments due on or before July 31.—Domestic and Foreign Corporations.

Delaware — Annual Franchise Tax due between April 1 and July 1.—Domestic Corporations.

Withholding at source Returns due on or before July 31. Domestic and Foreign Corporations paying compensation to Delaware employees.

Dominion of Canada — Income Tax Return due on or before June 30.—Domestic and Foreign Corporations.

Florida — Annual Report and Fee due on or before July 1.—Domestic and Foreign Corporations.

Idaho — Annual Statement and Annual License Tax due between July 1 and September 1.—Domestic and Foreign Corporations.

Illinois — Annual Franchise Tax due on or before July 1, but may be paid up to July 31 without penalty.—Domestic and Foreign Corporations.

Indiana — Annual Report due within 30 days after June 30.—Domestic and Foreign Corporations.

Quarterly Gross Income Tax Returns and Payments due on or before July 31.—Domestic and Foreign Corporations.

Iowa — Annual Report due between July 1 and August 1.—Domestic and Foreign Corporations.

Statement of Capital and Property Increase due at the time of filing the Annual Report in July.—Foreign Corporations.

Report of certain Transfers of Stock due on or before July 1.—Domestic Corporations.

Quarterly Retail Sales Tax Returns and Payments due on or before July 31.—Domestic and Foreign Corporations.

Kentucky — Statement of Existence due in June—Foreign Corporations.

Verification Report as to process agent due in June.—Domestic and Foreign Corporations.

Quarterly Withholding Tax due on or before July 31.

Maryland — Quarterly Withholding Tax due on or before July 31.

Michigan — Report of Unclaimed Moneys, Securities, Credits, etc., due on or before June 30.—Domestic and Foreign Corporations.

Mississippi — Annual Franchise Tax Report and Tax due on or before July 15.—Domestic and Foreign Corporations.

Annual Report and Fee to Factory Inspector due in July.—Domestic and Foreign Corporations employing five or more persons in Mississippi.

Missouri — Annual Registration Statement and Anti-Trust Affidavit due on or before July 31.—Domestic and Foreign Corporations.

Quarterly Retail Sales Tax Returns and Payments due on or before July 15.—Domestic and Foreign Corporations.

Montana — Annual License Tax based on net income due on or before June 15.—Domestic and Foreign Corporations.

Nebraska — Annual Report and Franchise (Occupation) Tax due on or before July 1.—Domestic Corporations.

Annual Report and Franchise (Occupation) Tax due on or before July 1.—Foreign Corporations.

Nevada — Annual List of Officers and Designation and Acceptance of Resident Agent due on or before July 1.—Domestic and Foreign Corporations.

North Carolina — Annual Franchise Tax Report and Tax due on or before July 31.—Domestic and Foreign Corporations.

North Dakota — Corporation Report due during July.—Domestic Corporations.

Quarterly Retail Sales Tax Returns and Payments due on or before July 31.—Domestic and Foreign Corporations.

Ohio — Retail Sales Tax Returns and Vendors' Excise Tax due on or before July 31.—Domestic and Foreign Corporations.

Oklahoma — Annual Capital Stock Affidavit due between July 1 and August 1.—Foreign Corporations.

Annual Franchise Tax Return and Payment due between July 1 and August 31.—Domestic and Foreign Corporations.

Oregon — Annual Statement due between July 1 and August 15.—Domestic and Foreign Corporations.

Annual License Fee due on or before August 15.—Domestic Corporations.

Quarterly Withholding Tax due on or before July 31.

Annual License Fee due between July 1 and August 15.—Foreign Corporations.

South Dakota — Quarterly Retail Sales Tax Returns and Payments due on or before July 15.—Domestic and Foreign Corporations.

Tennessee — Annual Privilege (Franchise) Tax Return and Payment, Annual Report and Tax and Excise Tax Report and Tax due on or before July 1.—Domestic and Foreign Corporations.

Report of Dividends paid to residents due on or before July 1.—Domestic and Foreign Corporations.

United States — Second Installment of Income Tax due June 15.—Domestic Corporations and Foreign Corporations having offices or places of business in the United States.

Utah — Quarterly Retail Sales Tax Returns and Payments due on or before July 30.—Domestic and Foreign Corporations.

Vermont — Quarterly Withholding Tax due on or before July 31.

Washington — License Fee due on or before July 1.—Domestic and Foreign Corporations.

West Virginia — License Tax Statement due on or before July 1.—Domestic Corporations.

Annual License Tax due on or before July 1.—Domestic and Foreign Corporations.

Fee to State Auditor as Attorney in Fact due on or before July 1.—Foreign Corporations and those Domestic Corporations whose principal place of business or chief work was located in other states.

Quarterly Business and Occupation (Gross Sales) Tax Returns and payments due on or before July 31.—Domestic and Foreign Corporations.

Wisconsin — Second Installment of Income Tax due on or before August 1.—Domestic and Foreign Corporations.

Wyoming — Annual Statement and License Tax due on or before July 1.—Domestic and Foreign Corporations.

Supplementary literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York 5, N. Y.

Heads I Win, Tails You Lose. An explanation of the possible consequences to the corporation which takes a chance [?] on doing business in states outside the state of its incorporation without complying with governing laws, rulings and regulations.

Spot Stocks Mean More Sales. A review of the advantages *and* dangers of using spot stocks at strategic shipping centers to bolster and increase sales.

Corporate Tightrope Walking. Of interest to counsel for and the officers of any corporation carrying on business in interstate commerce.

Agent for Process. Case histories of corporation officials who suddenly found out that trouble can take funny bounces when statutory representation is entrusted to a business employee.

Before and After Qualification. A complete list of aids and services—including those supplied without charge—which CT furnishes for lawyers working on foreign corporation matters.

Corporate Confusion. A discussion of the wriggling, twisting, seemingly opposite court decisions which make building a pattern for out-of-state operations by a corporation a risky business these days.

A Pretty Penny . . . Gone! What it can cost a corporation—as shown by actual court cases—if its agent cannot be found when service of process is attempted.

Suppose the Corporation's Charter Didn't Fit! Shows how charter provisions which suit well enough at time of organization may be handicaps for the corporation in later life—some measures to avoid them that a lawyer may help his client to take.

Some Contracts Have False Teeth. Interesting case-histories showing advisability of getting lawyer's advice before contracting for work outside home state, even for federal government.

THE CORPORATION TRUST COMPANY
120 Broadway, New York 5, N. Y.

Form 3547 requested

The CORPORATION JOURNAL

The Corporation Journal is published by The Corporation Trust Company bi-monthly, February, April, June, August, October and December. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers and accountants upon written request to any of the company's offices.

CT SYSTEM

The Corporation Trust Company
C T Corporation System
and Associated Companies

Albany 10.....4 S. Hawk Street
Atlanta 3.....Healey Building
Baltimore 2 .....10 Light Street
Boston 9 .... 10 Post Office Square
Buffalo 3 Ellicott Square Building
Chicago 4 ...208 S. La Salle Street
Cincinnati 2.....Carew Tower
Cleveland 14....Union Com. Bldg.
Dallas 1, Republic Nat'l Bank Bldg.
Denver 2 .....1700 Broadway
Detroit 26 ..... Dime Building
Dover, Del. ..... 30 Dover Green
Houston 2.....608 Fannin St.
Jersey City 2 15 Exchange Place
Los Angeles 13....510 S. Spring St.
Minneapolis 1, Midland Bank Bldg.
New York 5.....120 Broadway
Philadelphia 9..123 So. Broad St.
Pittsburgh 22.....Oliver Building
San Francisco 4.....333 Pine St.
Seattle 1.....1218 Third Ave.
St. Louis 2 .. 314 North Broadway
Washington 4 ....Munsey Building
Wilmington 99 100 West 10th St.